



## Rancher Applicant comments on Draft BiOp

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Wed, Dec 30, 2020 at 1:21 PM

To: "Ketcham, Brannon" <Brannon\_Ketcham@nps.gov>

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Brannon,

Here is my response to the Rancher Applicant concerns posed in their letter:

1) **The NMFS Biop Should Explicitly Include Favorable Information from the Park Service Biological Assessment about the Limited Scope of Ranching on the Seashore relative to Fish and Fish Habitat.**

The analysis section(s) of the Draft BiOp already includes much of the suggested language from the NPS BA. We opted to share the "operative" sections of the BiOp (those that may directly impact rancher operations such as monitoring and reporting requirements, terms and conditions of the take statement, and NMFS' final effects determination). If NPS would like us to provide additional sections for rancher applicant review, it may significantly delay the timeline for completion of the Section 7 consultation and will not likely influence final outcomes (ie., "favorable" information already considered and included in NMFS effects analysis and final determination for listed species).

2) **Incidental Take Statement Should Not Define Take Based on Beneficial Habitat Projects.**

Section 7 of the ESA requires federal agencies to consult with FWS or NMFS whenever they carry out, fund, or authorize an action that **may affect** any threatened or endangered species or cause the destruction or adverse modification of designated critical habitat for any listed species. **In the event the overall effect of the proposed action is beneficial to the listed species, but is also likely to cause some adverse effects, then the proposed action "is likely to adversely affect" the listed species.** If incidental take is anticipated to occur as a result of the proposed action, an "is likely to adversely affect" determination should be made. An "is likely to adversely affect" determination requires the initiation of formal section 7 consultation.

Dewatering stream reaches and capturing and relocating fish may be necessary during the implementation of activities covered under Section 2.5.2 Ranch Infrastructure (specifically during Road Upgrade and Decommissioning, Stream Crossings, and Waterway Stabilization). Road upgrade and decommissioning treatments and other restorative actions may cause temporary habitat disturbance but if strategically addressed, these projects also have the potential to reduce erosion and have beneficial results for fish passage and water quality. However, it is necessary to consider these actions in the ITS due to temporary or short-term take that may occur.

Please let me know how NPS would like to proceed. We can provide draft analysis sections if all parties agree to a deadline extension (following ESA regulations listed below). Otherwise, I would like to submit a final draft BiOp for internal review ASAP if we are to meet the January 31 deadline. Also happy to discuss further if necessary.

Thank you,  
Jodi

### Section 402.14 Formal Consultation

(e) *Duration and extension of formal consultation.* Formal consultation concludes within 90 days after its initiation unless extended as provided below. If an applicant is not involved, the Service and the Federal agency may mutually agree to extend the consultation for a specific time period. If an applicant is involved, the Service and the Federal agency may mutually agree to extend the consultation provided that the Service submits to the applicant, before the close of the 90 days, a written statement setting forth:

(1) The reasons why a longer period is required,

(2) The information that is required to complete the consultation, and

(3) The estimated date on which the consultation will be completed. A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant. Within 45 days after concluding formal consultation, the Service shall deliver a biological opinion to the Federal agency and any applicant.

On Tue, Dec 29, 2020 at 11:20 AM Ketcham, Brannon <[Brannon\\_Ketcham@nps.gov](mailto:Brannon_Ketcham@nps.gov)> wrote:

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